

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JPMORGAN CHASE BANK, N.A.,

Plaintiff,

v.

HOSTWAY CORPORATION,

Defendants.

Case No. 09-CV-000335 (WHP)
ECF Case

ANSWER TO AMENDED COMPLAINT

Defendant Hostway Corporation (“Hostway”), by and through its attorneys Ansa Assuncao, LLP, for its answer to Plaintiff’s Amended Complaint, states as follows:

NATURE OF THE ACTION

1. Hostway denies the allegations of paragraph 1.
2. Hostway admits the allegations of paragraph 2.
3. Hostway states that paragraph 3 contains a legal conclusion for which no answer is required and denies any remaining allegations.
4. Hostway denies the allegations of paragraph 4.
5. Hostway denies the allegations of paragraph 5.
6. Hostway denies the allegations of paragraph 6.

JURISDICTION AND VENUE

7. Hostway denies the allegations of paragraph 7.
8. Hostway admits the allegations of paragraph 8 but denies that venue is proper.

PARTIES

9. Upon information and belief, Hostway admits that JPMorgan is a national banking association organized and existing under the laws of the United States of America, but denies that JPMorgan is a resident of New York County.

10. Hostway admits the allegations of paragraph 10.

FACTUAL ALLEGATIONS

A. The Relevant Agreements

11. Hostway admits the allegations of paragraph 11.

12. Hostway admits the allegations of paragraph 12.

13. Hostway states that paragraph 13 contains a legal conclusion to which no answer is required and denies any remaining allegations.

14. Hostway states that paragraph 14 contains a legal conclusion to which no answer is required and denies any remaining allegations.

15. Hostway states that paragraph 15 contains a legal conclusion to which no answer is required and denies any remaining allegations.

B. Default. Termination and Demand for Payment

16. Hostway denies the allegations of paragraph 16.

17. Hostway admits that JPMorgan sent Exhibit D to Hostway, but denies the remaining allegations of paragraph 17.

18. Hostway admits that JPMorgan sent Exhibit D to Hostway, but denies the remaining allegations of paragraph 18.

19. Hostway admits the allegations of paragraph 19.

20. Hostway denies the allegations of paragraph 20.

21. Hostway admits that it received Exhibit E by hand delivery, but denies the remaining allegations of paragraph 21.

22. Hostway admits that it received Exhibit E, but denies the remaining allegations of paragraph 22.

23. Hostway admits that it received Exhibit F, but denies the remaining allegations of paragraph 23.

24. Hostway denies that it owes any amount to plaintiff and denies the remaining allegations of paragraph 24.

25. Hostway admits that it sent consolidated financial statements and a report of Ernst & Young LLP to plaintiff on August 28, 2008 but denies the remaining allegations of paragraph 25.

26. Hostway admits that it sent plaintiff a “Third Amendment and Waiver to Credit and Guaranty Agreement” but denies the remaining allegations of paragraph 26.

27. Hostway denies the allegations of paragraph 27.

FIRST CAUSE OF ACTION

28. Hostway repeats and realleges its answers to paragraphs 1 through 27 as if fully set forth herein.

29. Hostway denies the allegations of paragraph 29.

30. Hostway denies the allegations of paragraph 30.

SECOND CAUSE OF ACTION

31. Hostway repeats and realleges its answers to paragraphs 1 through 30 as if fully set forth herein.

32. Hostway denies the allegations of paragraph 32.

33. Hostway denies the allegations of paragraph 33.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims should be transferred pursuant to 28 U.S.C. § 1404(a).

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by plaintiff's prior material breaches of the agreements.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, precluded, or limited by the doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, precluded, or limited by the doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, precluded, or limited by the doctrine of unclean hands.

WHEREFORE, Hostway denies that plaintiff is entitled to judgment or any damages, and requests that this Court find in favor of Hostway, and award the costs and expenses, including attorney's fees, incurred by Hostway herein, to be determined at trial.

Dated: White Plains, New York
June 15, 2009

ANSA ASSUNCAO, LLP

By: s/Steven F. Gooby
Steven F. Gooby
Stephen P. McLaughlin
Attorneys for Defendant
Hostway Corporation
50 Main Street, Suite 1000
White Plains, New York 10606
(914) 682-2620